

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HOSTAR MARINE TRANSPORT SYSTEMS, INC.

Plaintiff,

v.

Civ. No. 05-10111 DPW

UNITED STATES OF AMERICA,

Defendant.

JOINT REPORT OF PARTIES AND PROPOSED SCHEDULING OF DISCOVERY

Pursuant to FED. R. CIV. P. 26(f) and Local Rule 16.1, an initial meeting of the parties was held by telephone with Attorneys Burke and Lyons participating. During the course of that meeting the issues in this case were discussed. The United States has currently pending before this Court a Motion to Dismiss for lack of jurisdiction. That motion was filed in lieu of an answer. All of the dates relating to filing the answer and discovery in this proposed schedule are tied, directly or indirectly, to the date on which the United States' Motion to Dismiss is acted upon by the Court. If the motion is granted, no further proceedings in this case will be necessary. If the motion is denied, the schedule below, subject to Court approval, will apply.

The main issue in this case is whether certain trailers manufactured by the plaintiff are subject to the Manufacturer's Federal Excise Tax. The plaintiff also contends that even if its trailers are subject to the excise tax, no tax should be due, based on due process grounds, because one or more of the plaintiff's competitors have not been charged the excise tax in issue in this case.

SCHEDULING AND DISCOVERY PLANS WERE DISCUSSED AND AGREED TO AS FOLLOWS:

1. The United States' answer will be due to be served within 20 days after the Court's denial of its motion to dismiss.
2. The initial disclosures required by FED. R. CIV. P. 26(a)(1) will be completed no later than two weeks after the United States' answer is due to be served.
3. All joinder of parties and amendments of pleadings will be served within two months after the United States is required to serve its answer.
4. All fact discovery will be completed within one (1) year from the date the United States' answer is due to be served. Counsel for the United States believes, based on past history of litigating federal excise tax cases, that waiving the limitations on the number of interrogatories, requests to admit and the number and length of depositions is necessary for a thorough preparation of the case, although both parties will endeavor to keep all discovery to a necessary minimum. Counsel for the plaintiff objects to waiving any of these limitations. Any written interrogatories or requests for production or admission served after the date of the Scheduling and Discovery Order shall be served by a date that allows the served parties the full 30 days (plus any extensions allowed by FED. R. CIV. P. 6) provided by the Federal Rules of Civil Procedure in which to answer or produce by the discovery cut-off date.
5. The plaintiff's expert witnesses, if any, shall be disclosed, along with a written report prepared and signed by the witnesses pursuant to Fed. R. Civ. P. 26(a)(2), within two months after the close of fact discovery. The defendant's expert witnesses shall be disclosed, along with a written report prepared and signed by the witnesses pursuant to Fed. R. Civ. P. 26(a)(2), within four months after the close of fact discovery. If one party, but not both parties, retain expert witnesses, no expert witness reports are required to be exchanged. The parties will complete the taking of expert witness depositions within five months after the close of fact discovery.

6. All dispositive motions shall be filed within one month after the time in which expert witness depositions may be taken.

7. Each party will separately file the certification required by Local Rule 16.1(D)(3).

By their Attorneys,

FOR THE PLAINTIFF:

/s/timothy j. burke
Timothy J. Burke- BBO# 543837
400 Washington Street
Braintree, MA 02184
Telephone: 781-380-0770
e-mail: tim@burkelaw.us

FOR THE DEFENDANT,
UNITED STATES:

/s/stephen t. lyons
Stephen T. Lyons
Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307-6546
e-mail: stephen.t.lyons@usdoj.gov

Dated: May 11, 2005